

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs July 22, 2026

FILED

09/08/2026

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. JEFFERY CANTRELL¹

Appeal from the Criminal Court for Knox County
No. 122630 Steven W. Sword, Judge

No. E2025-00887-CCA-R3-CD

Defendant, Jeffery Cantrell, appeals his Knox County convictions for aggravated sexual battery and sexual exploitation of a minor via electronic means, for which he is serving an effective ten-year sentence. Defendant contends that: (1) the trial court abused its discretion by admitting evidence of pornography found on his cell phone; (2) the evidence is insufficient to sustain his convictions; and (3) the trial court erred by not granting Defendant's request for a judgment of acquittal on Count 2 of the presentment after the State's case-in-chief. Following a thorough review, we affirm the judgments of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Criminal Court Affirmed

ROBERT L. HOLLOWAY, JR., J., delivered the opinion of the court, in which ROBERT H. MONTGOMERY, JR., and STACY L. STREET, JJ., joined.

Daniel B. Morrell (at trial and on appeal) and Joseph Della-Rodolfa (at trial), Knoxville, Tennessee, for the appellant, Jeffery Cantrell.

Jonathan Skrmetti, Attorney General and Reporter; Elizabeth Evan, Assistant Attorney General; Charne P. Allen, District Attorney General; and Heather Good and J. Franklin Ammons, Assistant District Attorneys General, for the appellee, State of Tennessee.

¹ In the presentment, Defendant is charged under the name "Jeffrey Cantrell, Alias." Prior to trial, Defendant filed a Motion in Limine to Strike Alias, in which he requested that the trial court strike his alias from the presentment and substitute it for his legal name, "Jeffery Cantrell." We note that the judgments of conviction list Defendant's name as "Jeffery A. Cantrell, Alias" and list Defendant's alias as "Cantrell, Jeffrey (Alias Stricken)."

OPINION

I. Factual and Procedural Background

On September 29, 2022, the Knox County Grand Jury issued a presentment, charging Defendant with the following offenses, which were alleged to have occurred between January 1, 2021, and October 1, 2021:

Count	Offense	Classification	Victim
1	Aggravated sexual battery	Class B felony	J.S. ²
2	Sexual exploitation of a minor via electronic means	Class C felony	J.S.
3	Sexual exploitation of a minor via electronic means	Class C felony	J.S.
4	Solicitation of a minor	Class B felony	C.R.
5	Aggravated sexual battery	Class B felony	C.R.

Prior to trial, Defendant filed a motion to sever the offenses, requesting that Counts 4 and 5 be severed from Counts 1-3. Following a hearing, the trial court granted the motion, and Defendant proceeded to trial on Counts 1-3.

Motion in limine

Defendant filed a “Motion in Limine for Pretrial on-the-Record Findings Pursuant to Rules 403 and 404(b) of the Tennessee Rules of Evidence[,]” which read:

Comes now . . . Defendant, by and through counsel, and pursuant to Rules 403 and 404 of the Tennessee Rules of Evidence, and respectfully moves this Court to make a pretrial on-the-record determination concerning the admissibility or exclusion of any 404(b)-type evidence, as specified in subdivision (b)(2) and (3) of Rule 404, which the State may seek to offer in this case.

On the morning of trial, the court briefly addressed this motion in limine, stating:

And then the next motion is, likewise, it’s a 403- and 404(b)-type. So 403 is usually a little harder to determine, but 404(b), certainly, if there’s . . . any evidence that the State believes could fall under 404(b), let’s have a jury-out hearing before we engage in that.

² It is the policy of this court to identify minor victims by their initials only.

The State then noted:

[O]ne of the allegations in this case is that [Defendant] showed the minor victim pornography on his phone. During the course of the investigation [Defendant] turned over his phone to law enforcement. We have since had that phone examined.

[Deputy] Wassman is going to be called to testify about the examination of that phone. And, essentially, the only thing that we were going to call him for, at this point in time, is just to say that, once he examined that phone, that he did, in fact, find multiple images and videos that contained pornographic material. We did not intend to show any of those images or get into specific details about them or anything like that, but just to corroborate what the victim said regarding the images and videos that he was shown from [Defendant's] phone.

In response, defense counsel objected to Deputy Wassman's proposed testimony under Tennessee Rule of Evidence 401, stating:

Your Honor, if the State doesn't intend to, you know, elicit any kind of specific testimony about what images were seen, then I think it's actually irrelevant whether there was actually pornography on the phone or not. If they're just, in general, wanting to say that this man had pornography on his phone, I think that would be, otherwise, irrelevant.

The trial court overruled defense counsel's objection. The court noted that Defendant's showing the victim pornography on the phone was not a prior bad act under Rule 404(b); rather, it was an element of the offense in Counts 2 and 3 and that the purpose of Deputy Wassman's proposed testimony was to corroborate the victim's expected testimony that Defendant showed him pornography on the phone. The court found that the victim's "testifying that it was done and then the officer finding pornography on the phone, certainly, would be relevant to that element of Counts 2 and 3, that requires . . . something that would be considered material harmful to a minor is what's shown." The court further found that "the danger of unfair prejudice is greatly outweighed by . . . the probative value, because the State has to prove that element."

State's case-in-chief

Fifteen-year-old J.S. (“the victim”) testified that he was born on December 22, 2008, and that Defendant was the best friend of T.S.,³ the man the victim believed was his biological father until 2021 when a DNA test was performed. The victim explained that he spent weekends at the house that T.S. shared with his wife and their three foster children. The victim stated that the house had four bedrooms—three upstairs and one downstairs—and that, often when he spent the night, he shared an upstairs bedroom with Defendant. The victim said that this bedroom contained one bed “in the corner” and a set of bunk beds; when Defendant stayed the night, Defendant slept on the bottom bunk, and the victim slept on the top bunk.

The victim recalled that Defendant often brought a duffel bag to T.S.’s house, which Defendant would leave in the victim’s bedroom. The bag contained a mixture of male and female clothing and “sometimes sexual . . . adult toys.” When asked whether he and Defendant ever talked about the contents of the duffel bag, the victim replied, “The only time we ever talked about what was in that duffel bag was when [Defendant] made me wear the stuff.”

The victim testified that, on one occasion, Defendant pulled out a pair of beige pantyhose and made him wear them for the day. He explained that, when he told Defendant he did not want to wear them, Defendant said, “Just put them on. It’s just for the day. If you do it all day, I’ll give you a gift or a surprise.” The victim testified that, as he was putting on the pantyhose, Defendant told the victim, “No, you’re not putting them on right” and then he assisted the victim in putting on the pantyhose. As he did so, Defendant touched the pantyhose over the victim’s genitals with his hand. Defendant then moved his hand in “a fondling motion” while touching the victim’s genitals. The victim testified that this had made him feel “[d]isgusting” and that he had not wanted Defendant to touch him.

The victim stated that he wore the pantyhose for the rest of the day, during which time the victim, his family, and Defendant went to a rodeo. As soon as he returned home that night, the victim removed the pantyhose and threw the item in the garbage. He testified that he felt humiliated when wearing the pantyhose.

The victim stated that Defendant slept in his bedroom that night. He said that, during the night, Defendant “touched himself and listened to porn loudly.” He testified, “I heard . . . pornographic videos start playing. And I peeked over the edge [of the bunk bed]

³ Because at the time of the offenses the victim and T.S. shared the same surname, we will refer to T.S. by his initials to further protect the victim’s identity. No disrespect is intended.

and I saw [Defendant] touching himself.” The victim said that Defendant was watching the videos on his cell phone and that Defendant was touching himself “under the covers.”

The victim testified that Defendant showed him pornography many times; the pornography was on Defendant’s cell phone and included “pictures and videos of naked females, males and transgender people.” The victim explained that Defendant would show him the pornography either in the victim’s bedroom or while sitting on the staircase of the house. The victim testified that, when showing him the pornography, “[Defendant] would ask me if he could do it to me sometimes.” The victim recalled that this made him feel “very uncomfortable.”

The victim said that these events “probably happened middle, later 2020.” He said that he was eleven and twelve years old during the time Defendant showed him pornography. He recalled that he told his mother about Defendant’s conduct in 2021, and she called the police. The victim testified that he had first told T.S. and his stepmother about what Defendant had done and that T.S. had seemed “surprised[.]” The victim said that, about three months later, T.S. told him that he was not his biological father, and T.S. went to court and got his name removed from the victim’s birth certificate.

On cross-examination, the victim agreed that, at times, T.S. and his stepmother took in “respite kids” but denied that there was a “respite kid” sleeping in his bedroom the night of the rodeo. When asked if the rodeo incident occurred in the summer of 2020, the victim stated he was “not sure[.]” The victim denied that he had gone through Defendant’s duffel bag and taken things out of it. He explained that he saw what was inside the duffel bag because the bag was “sitting wide open” on the floor of his bedroom.

The victim stated that he had to “peek over the side” of the top bunk to see Defendant’s masturbating on the bottom bunk. The victim agreed that he asked Defendant to look for a picture of “high-top Converse . . . lace-up” boots on his cell phone one time. The victim further agreed that Defendant sometimes left his cell phone in the victim’s bedroom at T.S.’s house. When asked if he knew how to open Defendant’s cell phone, however, the victim responded, “No. He was very, very protective over his phone.” The victim said that he had not known the “swipe pattern” to unlock Defendant’s cell phone and that he had never tried to unlock it.

The victim recalled that he told T.S. and his stepmother everything that had happened with Defendant about three months after the day of the rodeo. The victim stated that he was upset when he learned that T.S. was not his biological father and that he stopped going over to T.S.’s house after T.S. took his name off the victim’s birth certificate.

On redirect, the victim agreed that he underwent a forensic interview in October 2021 and that, during the interview, he reported that the incident with the pantyhose happened “a few months before[.]” He testified that, as of the time of trial, it was difficult for him to recall the dates of when things happened.

The victim recalled the first time Defendant showed him pornography on Defendant’s cell phone. The victim had been sleeping downstairs, and Defendant had walked down the staircase and said, “Hey, come here for a second.” The victim walked over to the stairs, and Defendant asked him “a bunch of regular questions like, ‘Hey, how’s your day been? How’s school going?’” Defendant then asked the victim if the victim was dating anyone before he began showing the victim “sexual pictures” on his cell phone and asking the victim “sexual questions.” The victim recalled that the pictures were “of females” and that Defendant asked him if he “wanted that stuff done to [him].”

Fifteen-year-old C.R. testified that, in 2021, T.S. and his wife were her foster parents and that she lived at the foster parent’s house in Strawberry Plains. C.R. explained that one day in 2021, she went to the rodeo with her foster family. She said that the victim seemed “sh[a]ken and upset” that day. While at the rodeo, C.R. and the victim were sitting on some bleachers when the victim, who was wearing jeans and a long-sleeved shirt, pulled up a pant leg and showed C.R. that he was wearing pantyhose.

The victim’s mother testified that she had known T.S. for about twenty years and that they had been in a romantic relationship. She explained that, at one point, they separated; she began dating another man and became pregnant with the victim. While she was still pregnant, she and T.S. reconciled, and she told T.S. that the victim was not his biological child. Nevertheless, T.S. put his name on the victim’s birth certificate, and she and T.S. stayed together for about five years after the victim’s birth. After she and T.S. broke up, T.S. continued to see the victim on weekends. The victim was “always super excited” to go to T.S.’s house. T.S. eventually married the victim’s stepmother, and they moved to a house on Coatbridge Lane in Knox County. The victim’s mother testified that she had been aware that Defendant often stayed overnight at T.S.’s house but that she had not known that Defendant slept in the bunk bed in the victim’s bedroom.

The victim’s mother testified that, in 2021, the victim began telling her that he did not want to go to T.S.’s house, and he eventually told her that “something . . . had happened” with Defendant while he was at the house. She said that the victim was scared, quiet, and withdrawn at this time. She called the police and reported what the victim told her. She said that, thereafter, the victim stopped going to T.S.’s house, and T.S. had his name removed from the victim’s birth certificate in August 2021. She explained that Defendant’s actions had “dramatically affected” the victim. She said that the victim was

fearful, suffered panic attacks, and did not trust men he did not know. She also said that she had to withdraw the victim from school because he could not concentrate.

Detective Preston Huddleston with the Knox County Sheriff's Office (KCSO) testified that he worked with an investigator from the Department of Children's Services (DCS) to schedule a forensic interview for the victim. Detective Huddleston attended the forensic interview, during which the victim disclosed sexual abuse by Defendant.

Detective Huddleston stated that, in December 2021, he spoke to Defendant at Defendant's place of work. During the interview, Defendant brought up the victim's having worn pantyhose. Defendant told Detective Huddleston that the victim was "curious about pantyhose and his sexuality[.]" so he gave the victim a pair of pantyhose, which the victim wore to a rodeo they attended that day.

Detective Huddleston testified that he presented Defendant with a search warrant for his cell phone. He said that, when he returned the cell phone to Defendant a couple of weeks later, he interviewed Defendant a second time. During the interview, Defendant denied showing the victim any pictures on his cell phone, but he eventually said that he may have "inadvertently" or "accidentally" shown some to the victim. Detective Huddleston testified that Defendant never told him someone else was in the bedroom with him and the victim on the night of the rodeo.

On cross-examination, Detective Huddleston agreed that he asked Defendant a lot of questions about his showing the victim pictures on his cell phone. He specified to Defendant that the pictures at issue were of "nude males, nude females" and pictures of dildos.

Deputy Edward Wassman testified that he worked as a forensic examiner with the KCSO, analyzing digital equipment including computers, cell phones, laptops, and GPS devices. He explained that he would extract available data from a device, make a copy of the data, and then produce a report about the data. Deputy Wassman stated that he was asked to examine Defendant's cell phone after it was collected pursuant to a search warrant. When Deputy Wassman examined the phone, he discovered videos and photos of men and women engaged in "sex acts."

Motion for judgment of acquittal

After the State's case-in-chief, Defendant moved for a judgment of acquittal under Rule 29 of the Tennessee Rules of Criminal Procedure. Regarding Count 2, the State noted that it was relying upon the victim's testimony about "being in bed and hearing . . . pornographic sounds and looking over the side of the bed and actually seeing [Defendant]

touching himself and masturbating.” Regarding that count, defense counsel argued the State had offered no proof that Defendant had intended that the victim observe any sexual activity. Defense counsel argued:

There’s no indication that there was any conversation, there was no testimony that there was anything said otherwise to get [the victim’s] attention or otherwise to do so in such a way that it could not be missed. He did testify the covers were up over [Defendant’s] chest, this wasn’t a situation where he was just exposed in some way.

In response, the trial court stated:

The question is, did [Defendant] have the purpose of having the minor view that sexual activity? And there’s some proof that he didn’t. One is, even according to [the victim], the covers were up. And I think [Defendant] told the detective, too, that, you know, he did it in such a way that [the victim] couldn’t see it. And we have the testimony of [the victim] that he looked down and saw what was going on and could tell, just the way [Defendant] was behaving, that that is what, in fact, was happening.

....

And so I look at, under Rule 29, again, in the light most favorable to the State, is there any proof that could sustain the position that [Defendant] was doing this for the purpose of having [the victim] actually see it? And there’s some circumstantial proof.

One is that there had already been some things going on that day of a sexual nature, . . . the discussions and the wearing the pantyhose, they were in the same room, in bunk beds, and the alleged victim was actually in the room, there was a volume on . . . on the phone, which, obviously, let [the victim] know there’s something sexual going on. And so, you know, it could have been muted.

I think it’s a very weak case. I’m not sure it survives Rule [33], if the jury finds him guilty. But I do think it survives Rule 29, because of the factors that I just outlined.

Defense proof

K.S. testified that she was married to T.S. and was the victim's former stepmother. She explained that she had known Defendant for more than fifteen years and that she was his daughter's godmother. She said that the victim had spent the weekends at her and T.S.'s house on Coatbridge Lane and that Defendant had spent the night at the house "every other weekend." K.S. described the house as having an open floor plan with three bedrooms upstairs and one bedroom downstairs.

K.S. testified that the victim eventually stopped staying at the house on weekends. She explained that T.S. "[h]eard rumors that the victim was not [his] biological son" and that, after a DNA test confirmed this in August or September 2021, they went to court and had T.S.'s name removed from the victim's birth certificate.

K.S. explained that she and T.S. owned a food truck and that they routinely took it to rodeos to sell food. K.S. recalled that they took the food truck to the New Market Rodeo in July 2021. She said that she and several other family members arrived at the rodeo at 4:00 p.m. to set up and that T.S. and Defendant picked up the victim from the house and brought him to the rodeo a few hours later. K.S. testified that the victim was acting normally that night; she said, "He was running around playing with the kids, if they [weren't] helping us, running, playing on the bleachers." She said that they left the rodeo between 11:00 p.m. and 12:00 a.m. and returned to the house.

When asked about the sleeping arrangement that night, K.S. said that Defendant was downstairs on the couch, and the victim and a respite kid slept in the victim's bedroom. She agreed that Defendant sometimes slept in the victim's bedroom on a "futon pullout"; she said, however, that bedroom doors were kept open in her house and that she did not allow children in her care to have cell phones.

K.S. testified that, when she met Defendant, he soon disclosed that he was a cross-dresser. She testified that this "wasn't something he was doing out in the open" or while he was at her house. She acknowledged that she had seen a picture of Defendant in women's clothing, but she stated that he had never dressed that way in her presence. According to K.S., Defendant and T.S. would occasionally joke about Defendant's cross-dressing. K.S. testified that she believed the victim knew about Defendant's "private life" because the victim "overheard some conversations." K.S. denied that Defendant and T.S. shared pornographic images with each other when children were in the same room with them, stating that T.S. "has more class than that."

K.S. testified that she did not know anything about the victim wearing pantyhose on the night of the rodeo. She stated, however, that the victim had spoken to her about "men

wearing women's clothes[.]” K.S. testified that she had known the victim since he was three years old and that he did not have a character for truthfulness.

On cross-examination, K.S. stated that the first time she heard about the victim's allegations against Defendant was when she was contacted by someone from DCS. K.S. recalled meeting with DCS Investigator Amy Walker on September 22, 2021. She denied telling Investigator Walker during the meeting that she and T.S. had respite kids at the house in the past “but . . . hadn't had any recently[.]” K.S. denied telling Investigator Walker that the victim had disclosed to her “some stuff that had gone on with [Defendant] involving pantyhose” or that she had confronted Defendant and made him leave her house.

K.S. testified that she was unaware that Defendant admitted to detectives he slept in the victim's bedroom the night of the rodeo and admitted masturbating while lying in the bottom bunk. She was also unaware that Defendant never told detectives there was a respite kid in the victim's bedroom the night of the rodeo. K.S. said she did not know Defendant admitted to detectives that he gave the victim pantyhose when they were getting ready for the rodeo. She was also unaware that Defendant admitted talking to the victim about cross-dressing, “relationships and sexuality[.]”

Defendant testified that he had met T.S. through work and that he and his girlfriend had become good friends with T.S. and K.S. Defendant said that, beginning in 2012 or 2013, he began going over to their house “almost every weekend[.]” He said that he eventually told T.S. and K.S. that he was a cross-dresser.

Defendant testified that, on the day of the rodeo, he went into the victim's bedroom where he left his duffel bag because he needed to change shirts. The victim was inside the bedroom lying on the bottom bunk, and Defendant noticed that his duffel bag was unzipped and open. Defendant explained that he always made sure the duffel bag was zipped up “because that was the same bag that [he] would use to go over to a friend's house, to either get pictures or just to, pretty much, hang out and have what [he] and that person would call ‘girl time.’” He said that the duffel bag was on the bunk bed but that he thought he had left it on the floor.

Defendant testified that the victim began asking him questions. Defendant continued:

And then that's when [the victim] asked me, “Hey, how does those feel?” And I'm like, “How does what feel?” And he goes, “Pantyhose.” I'm like, “Well, there's a pair laying right here I didn't know I had.” I said, “They're probably a spare pair. Here. Take them. I don't need them.”

Defendant denied telling the victim to put on the pantyhose and denied forcing him to wear them; he also denied that he told the victim he would “get him a gift if [the victim] put them on[.]” He said he merely handed the pantyhose to the victim and did not know whether the victim wore them to the rodeo.

Defendant recalled returning to T.S.’s house after the rodeo around 12:00 a.m. or 1:00 a.m. Defendant acknowledged that he slept in the victim’s bedroom that night; he explained that this was because a “respite kid” was having nightmares and T.S. and K.S. suggested that, if he had another one, Defendant could “wake him up and try to get him to calm back down” or bring him downstairs to them.

Defendant explained that he got in bed on the bottom bunk and began looking on his cell phone at Facebook and an app called “FetLife.” He stated that the victim was on the top bunk and that the respite kid was on the bed in the corner. Defendant said that the lights were turned off but that the respite kid was still awake. Defendant denied masturbating while lying on the bottom bunk. He stated that the only time he masturbated in the victim’s bedroom was when he was alone in the house.

Defendant denied showing the victim pornography on his cell phone while they were sitting on the stairs. He testified that, to unlock his cell phone, he used a swipe pattern of an “L”; he said that the swipe pattern was the same as the pattern used on T.S.’s cell phone and that the victim was aware of this. Defendant acknowledged that he told Detective Huddleston that the victim “might have seen something [he] was showing [T.S.]” on the cell phone. Defendant explained:

A few times I have had, like, a picture of a Hooters’ girl or picture of a girl in a bathing suit and been like, “Hey, [T.S.],” you know, just, kind of, like, two old boys would do. And, sure enough, [the victim] said his daddy’s name about the time I said, “Hey, [T.S.],” one time. That’s how I know that he had seen at least that picture.

Defendant denied touching the victim’s penis or touching him inappropriately anywhere. He said that he did not force the victim to put on the pantyhose the day of the rodeo and that he did not know if the victim had worn them. He also denied showing the victim inappropriate images on his cell phone.

On cross-examination, Defendant acknowledged that he never told Detective Huddleston that a respite kid had been in the victim’s bedroom the night of the rodeo. He also acknowledged he did not tell Detective Huddleston that his duffel bag was open on the bunk bed with the victim when he came into the room to change shirts. Defendant acknowledged telling Detective Huddleston that the victim saw pantyhose in the bag and

asked if he could have a pair because he thought he was gay. Despite his testimony on direct examination that he only masturbated in the victim's bedroom one time when he was alone in the house, Defendant admitted telling Detective Huddleston that he knew the victim was above him in the top bunk when he was masturbating but that the victim could not see him.

Defendant testified that there could have been times that the victim saw pornography on his cell phone but that, if the victim did, Defendant did not intend that to happen. Defendant agreed that, in July 2021, K.S. told him to stay away from her house.

State's rebuttal proof

As a rebuttal witness, DCS Investigator Amy Walker testified that, in September 2021, she was assigned to a case involving the victim. On September 22, 2021, she interviewed K.S. During the interview, K.S. stated that the victim previously told her about the sexual abuse allegations against Defendant. K.S. said that she confronted Defendant about the victim's allegations and told Defendant that "he couldn't come around." Investigator Walker testified K.S. also commented that, "while they had had respite kids in the past, they had not had any stay with them recently[.]"

Verdict and subsequent proceedings

Following deliberations, the jury found Defendant guilty as charged in Counts 1-3. The trial court subsequently determined that it disagreed with the jury about the weight of the evidence as to Count 2 and set aside the verdict in that count.⁴ Following a hearing, the trial court sentenced Defendant, as a Range I offender, to concurrent terms of ten years on Count 1 and four years on Count 3.⁵

Defendant filed a timely motion for new trial and an amended motion for new trial. Following a hearing, the trial court entered a written order denying the motion for new trial on May 12, 2025. On June 12, 2025, Defendant filed an untimely notice of appeal.

After the filing of Defendant's brief, the State filed a motion to dismiss the appeal based upon the untimely filing of the notice of appeal. Defendant filed a written response to the motion to dismiss, in which counsel explained that he inadvertently miscalculated the filing deadline by one day and asked that this court waive the timeliness of the notice

⁴ The State later entered a nolle prosequi on Count 2.

⁵ Defendant subsequently pleaded guilty in Count 5 to the lesser-included offense of sexual battery. Pursuant to his plea agreement, the trial court imposed a two-year sentence, running concurrently with the ten-year sentence in Count 1, and dismissed Count 4.

of appeal so that the appeal could proceed on the merits. Upon consideration, this court concluded that the interest of justice required a waiver of the timely filing requirement and denied the State's motion to dismiss.

II. Analysis

A. Admission of cell phone evidence

Defendant contends that the trial court erred by admitting the testimony from Deputy Wassman concerning the “nebulous and non-specific pornographic material” found on his cell phone. Defendant asserts that the evidence of pornography on his phone should have been addressed by the trial court in a jury-out hearing under Tennessee Rule of Evidence 404(b), arguing that, “[a]bsent specific testimony regarding the images and videos retrieved from [the] phone, the trial court could not be in a position to evaluate whether the probative value of the evidence outweighed the danger of unfair prejudice.” Additionally, Defendant asserts, under Tennessee Rule of Evidence 403, that “the mere presence of sexually suggestive material on [his] phone lacked any probative value and the extreme prejudice that was introduced by testimony concerning the mere existence of this material was substantially outweighed by the inherent moral approbation that exists among the general population.”

The State responds that Defendant has waived these claims by failing to raise a contemporaneous objection at trial. The State further asserts that Defendant has not shown the trial court committed plain error by admitting Deputy Wassman's testimony about pornography found on Defendant's phone.

We will first address the State's waiver argument. Prior to trial, Defendant filed a motion in limine requesting that the trial court “make a pretrial on-the-record determination concerning the admissibility or exclusion of any 404(b)-type evidence[.]” Following the State's explanation of Deputy Wassman's proposed testimony, Defendant did not assert that this testimony was inadmissible under Rules 403 and 404(b); rather, Defendant made a general relevance objection, which the trial court overruled. Moreover, Defendant did not raise a contemporaneous objection to Deputy Wassman's testimony during trial, and he never requested a Rule 404(b) hearing on the issue, which he now faults the trial court for failing to provide.

A motion in limine preserves an issue only when it “clearly presents an evidentiary question and [when] the trial judge has clearly and definitively ruled.” *State v. Gray*, No. E2022-01000-CCA-R3-CD, 2023 WL 3916272, at *6 (Tenn. Crim. App. June 9, 2023) (quoting *State v. McGhee*, 746 S.W.2d 460, 462 (Tenn. 1988)), *perm. app. denied* (Tenn. Nov. 17, 2023). When “issues are only tentatively suggested or the record [is] only

partially and incompletely developed in connection with a motion in limine,’ the failure to lodge an objection during trial carries with it the risk that the issue has not been properly preserved.” *Id.* (quoting *State v. Ipock*, No. M2017-01374-CCA-R3-CD, 2018 WL 6077849, at *7 (Tenn. Crim. App. Nov. 20, 2018)); *see also McGhee*, 746 S.W.2d at 462. Consequently, when an objection is undeveloped, and no clear and definite ruling on the motion in limine is apparent from the record, a defendant must renew the motion contemporaneously with the introduction of the objectionable evidence. *See Gray*, 2023 WL 3916272, at *6. Failure to do so precludes the defendant from receiving plenary review on appeal. *Id.*; *see also Grandstaff v. Hawks*, 36 S.W.3d 482, 488 (Tenn. Ct. App. 2000).

In this case, Defendant failed to develop claims prior to trial that Deputy Wassman’s testimony was inadmissible under Rules 403 and 404(b), and he failed to lodge a contemporaneous objection to Deputy Wassman’s testimony and request a Rule 404(b) hearing during trial. Thus, we agree with the State that Defendant’s admissibility challenges under Rules 403 and 404(b) are waived for plenary review. *See Gray*, 2023 WL 3916272, at *6.

Nevertheless, plain error relief is available for “errors that had an unfair prejudicial impact which undermined the fundamental fairness of the trial.” *State v. Adkisson*, 899 S.W.2d 626, 642 (Tenn. Crim. App. 1994). In order to be granted relief under the plain error doctrine, five criteria must be met: (1) the record must clearly establish what occurred in the trial court; (2) a clear and unequivocal rule of law must have been breached; (3) a substantial right of the accused must have been adversely affected; (4) the accused must not have waived the issue for tactical reasons; and (5) consideration of the error must be “necessary to do substantial justice.” *Id.* at 640-41; *see also State v. Smith*, 24 S.W.3d 274, 282-83 (Tenn. 2000) (Tennessee Supreme Court formally adopting the *Adkisson* standard for plain error relief). When it is clear from the record that at least one of the factors cannot be established, this court need not consider the remaining factors. *Smith*, 24 S.W.3d at 283. The defendant bears the burden of persuasion to show that he is entitled to plain error relief. *State v. Bledsoe*, 226 S.W.3d 349, 355 (Tenn. 2007).

Our review of the record leads us to the conclusion that Defendant is not entitled to plain error relief because no clear and unequivocal rule of law was breached by the admission of Deputy Wassman’s testimony. Evidence is relevant and generally admissible when it has “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Tenn. R. Evid. 401, 402. Even relevant evidence, however, may be excluded “if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Tenn. R. Evid. 403. Moreover, under Tennessee Rule of Evidence 404(b):

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity with the character trait. It may, however, be admissible for other purposes. The conditions which must be satisfied before allowing such evidence are:

(1) The court upon request must hold a hearing outside the jury's presence;

(2) The court must determine that a material issue exists other than conduct conforming with a character trait and must upon request state on the record the material issue, the ruling, and the reasons for admitting the evidence;

(3) The court must find proof of the other crime, wrong, or act to be clear and convincing; and

(4) The court must exclude the evidence if its probative value is outweighed by the danger of unfair prejudice.

Tenn. R. Evid. 404(b).

Count 3 of the presentment alleged that Defendant “did unlawfully and intentionally directly display to a minor less than thirteen (13) years of age material containing sexual activity where the purpose of said display is for the sexual gratification of the minor or the person displaying the material[.]” *See* Tenn. Code Ann. § 39-13-529(b)(2). The existence of “material containing sexual activity” was an element of the offense; therefore, its existence was not a “prior bad act” subject to exclusion under Rule 404(b). *See State v. Rickman*, 876 S.W.2d 824, 829 (Tenn. 1994).

Likewise, Defendant cannot establish plain error under Rule 403. Defendant argues on appeal that the pornography on his cell phone had “no probative value” and was highly prejudicial under Rules 401 and 403. However, because the existence of “material containing sexual activity” was an element of the offense in Count 3, it was highly probative. *See Rickman*, 876 S.W.2d at 829. Moreover, prejudicial evidence is not per se excluded.

[I]ndeed, if this were true, all evidence of a crime would be excluded at trial. Rather, what is excluded is evidence which is unfairly prejudicial, in other words, evidence which has an undue tendency to suggest a decision on an improper basis, frequently, though not necessarily, an emotional one.

State v. Gilbreath, No. E2020-00971-CCA-R3-CD, 2021 WL 4438554, at *8 (Tenn. Crim. App. Sept. 28, 2021) (citing *State v. Banks*, 564 S.W.2d 947, 951 (Tenn. 1978)), *perm. app. denied* (Tenn. Feb. 9, 2022). Because the existence of pornography on Defendant’s phone was directly related to an essential element of the offense in Count 3 and the evidence did not have an “undue tendency to suggest a decision on an improper basis,” Defendant cannot establish plain error under Rule 403. *See id.*

Finally, Deputy Wassman’s testimony that he found pornography on Defendant’s cell phone was relevant; the evidence made it more likely that Defendant committed the act of showing that pornography to the victim. *See* Tenn. Code Ann. § 39-13-529(b)(2). Thus, the trial court properly determined that the presence of the pornography had a “tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Tenn. R. Evid. 401. Defendant is not entitled to relief.

B. Sufficiency of the evidence

Defendant asserts that the evidence presented at trial was insufficient to sustain his convictions for aggravated sexual battery in Count 1 and sexual exploitation of a minor via electronic means in Count 3. Regarding Count 1, Defendant argues that the State failed to establish that the incident “could reasonably be construed as for the sexual gratification of [Defendant.]” As to Count 3, Defendant argues that there was “a distinct lack of detail” in the victim’s testimony regarding what he had shown the victim on his cell phone and that the State failed to prove it was “sexual activity for the purpose of the sexual gratification of the defendant or of the minor.”

The State responds that the evidence was sufficient for any rational juror to convict Defendant in Counts 1 and 3.

Our standard of review for a sufficiency of the evidence challenge is “whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (emphasis in original); *see also* Tenn. R. App. P. 13(e). Questions of fact, the credibility of witnesses, and the weight of the evidence are resolved by the fact finder. *State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997). This court will not reweigh the evidence. *Id.* Our standard of review “is the same whether the conviction is based upon direct or circumstantial evidence.” *State v. Dorantes*, 331 S.W.3d 370, 379 (Tenn. 2011) (quoting *State v. Hanson*, 279 S.W.3d 265, 275 (Tenn. 2009)) (internal quotation marks omitted).

A guilty verdict removes the presumption of innocence, replacing it with a presumption of guilt. *Bland*, 958 S.W.2d at 659; *State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982). The defendant bears the burden of proving why the evidence was insufficient to support the conviction. *Bland*, 958 S.W.2d at 659; *Tuggle*, 639 S.W.2d at 914. On appeal, the “State must be afforded the strongest legitimate view of the evidence and all reasonable inferences that may be drawn therefrom.” *State v. Vasques*, 221 S.W.3d 514, 521 (Tenn. 2007).

As relevant here, aggravated sexual battery is defined as unlawful sexual contact with a victim by the defendant or the defendant by a victim when the victim is less than thirteen years of age. Tenn. Code Ann. § 39-13-504(a)(4) (2021). Aggravated sexual battery is a Class B felony. Tenn. Code Ann. § 39-13-504(b) (2021). “‘Sexual contact’ includes the intentional touching of the victim’s . . . intimate parts, or the intentional touching of the clothing covering the immediate area of the victim’s . . . intimate parts, if that intentional touching can be reasonably construed as being for the purpose of sexual arousal or gratification[.]” Tenn. Code Ann. § 39-13-501(6). “‘Intimate parts’ includes semen, vaginal fluid, the primary genital area, groin, inner thigh, buttock or breast of a human being[.]” Tenn. Code Ann. § 39-13-501(2).

Tennessee Code Annotated section 39-13-529 provides, in pertinent part, that it is unlawful for any person eighteen years of age or older, directly or by means of electronic communication, electronic mail or internet service, including webcam communications, to intentionally:

[d]isplay to a minor, or expose a minor to, any material containing simulated sexual activity that is patently offensive or sexual activity if the purpose of the display can reasonably be construed as being for the sexual arousal or gratification of the minor or the person displaying the material[.]

Tenn. Code Ann. § 39-13-529(b)(2) (2021). “A violation of subsection (b) is a Class E felony; provided, that, if the minor is less than thirteen (13) years of age, the violation is a Class C felony.” Tenn. Code Ann. § 39-13-529(e)(2).

In this case, as Defendant “assisted” the victim in putting on pantyhose the day of the rodeo, Defendant touched the pantyhose over the victim’s genitals with his hand. Defendant then moved his hand in “a fondling motion” while touching the victim’s genitals. C.R. observed the victim, who was twelve years old at the time, wearing the pantyhose while at the rodeo and noted that the victim was “shaken.” From this, the jury could reasonably infer that Defendant intentionally touched the victim’s genitals for the purpose of sexual arousal or gratification. Taken in the light most favorable to the State, the evidence was sufficient for a reasonable juror to conclude that Defendant had unlawful

sexual contact with the twelve-year-old victim as charged in Count 1. *See* Tenn. Code Ann. § 39-13-504(a)(4) (2021).

Regarding the conviction in Count 3, the evidence established that, when the victim was eleven and twelve years old, Defendant showed him pornography on Defendant's cell phone. The pornography included "pictures and videos of naked females, males and transgender people." In recalling the first time this happened, the victim testified that he had been sleeping downstairs at T.S.'s house and that Defendant had walked down the staircase and said, "Hey, come here for a second." The victim walked over to the stairs, and Defendant asked him "a bunch of regular questions like, 'Hey, how's your day been? How's school going?'" Defendant then asked the victim if the victim was dating anyone before he began showing the victim "sexual pictures" on his cell phone and asking the victim "sexual questions." The victim recalled that the pictures were "of females" and that Defendant asked him if he "wanted that stuff done to [him]." When Deputy Wassman conducted a search of Defendant's cell phone, he discovered videos and photos of men and women engaged in "sex acts." Viewed in the light most favorable to the State, the evidence was sufficient for a reasonable juror to conclude that Defendant displayed material containing sexual activity to a minor who was less than thirteen years old for the purpose of sexual arousal or gratification. *See* Tenn. Code Ann. § 39-13-529(b)(2), (e)(2).

Because any rational juror could have found the essential elements of the offenses of aggravated sexual battery and sexual exploitation of a minor via electronic means beyond a reasonable doubt, Defendant is not entitled to relief. *See Jackson*, 443 U.S. at 319.

C. Rule 29 motion

Defendant asserts that the trial court erred by not dismissing Count 2 of the presentment upon his request for a judgment of acquittal under Tennessee Rule of Criminal Procedure 29 after the State's case-in-chief. Defendant insists that the court's post-trial dismissal of Count 2 under Tennessee Rule of Criminal Procedure 33(d) did not rectify the denial of his Rule 29 motion because the evidence that he masturbated in the same room as the victim was submitted to the jury and thus prejudiced him.

The State responds that this issue is waived and that, waiver notwithstanding, the trial court applied the proper analysis in denying Defendant's Rule 29 motion and in granting relief under Rule 33(d).

As noted by the State, if a defendant chooses to present proof after the trial court denies a motion for judgment of acquittal made at the close of the State's case-in-chief, then the defendant "waive[s] any claim of error for failure to grant the motion for judgment

of acquittal *at the conclusion of the proof offered by the State[.]*” *State v. Collier*, 411 S.W.3d 886, 893 (Tenn. 2013), *abrogated on other grounds by State v. Thomas*, 687 S.W.3d 223, 242 (Tenn. 2024). However, if the defendant renews his motion for judgment of acquittal at the conclusion of all the evidence, he does not “waive his right to appeal the denial of the motion made *at the close of all of the proof* or to challenge the sufficiency of the convicting evidence.” *Id.*

In this case, Defendant moved for a judgment of acquittal under Rule 29 at the close of the State’s case-in-chief. After the trial court denied the motion, Defendant presented evidence, and the State called a rebuttal witness. Defendant, however, failed to renew his motion for judgment of acquittal at the close of all proof. Accordingly, this issue is waived. *See Collier*, 411 S.W.3d at 893; *State v. Mulac*, No. M2024-00401-CCA-R3-CD, 2025 WL 1937465, at *18 (Tenn. Crim. App. July 15, 2025) (“In this case, the Defendant chose to offer proof following the trial court’s denial of his motion for a judgment of acquittal at the close of the State’s proof, and he failed to renew his motion for judgment of acquittal at the close of all the proof. As such, the Defendant has waived his right to appeal the denial of his motion.”), *perm. app. denied* (Tenn. Dec. 16, 2025).

Waiver notwithstanding, Defendant is not entitled to relief, as the trial court conducted a proper analysis when addressing Count 2 under Rules 29 and 33(d). In ruling on the motion for judgment of acquittal under Rule 29, the trial court was required to view the evidence in the light most favorable to the State, and it did so. *See State v. Dankworth*, 919 S.W.2d 52, 56 (Tenn. Crim. App. 1995). The trial court determined that there was sufficient evidence to send Count 2 to the jury because conversations and acts of a sexual nature had already occurred that day, allowing for the possibility that Defendant had masturbated in the bottom bunk in the victim’s room that night with the intent of having the victim view him. Accordingly, the court properly denied Defendant’s motion for judgment of acquittal as to Count 2 following the close of the State’s case-in-chief.

Following the jury’s verdicts of guilty as to Count 2, Rule 33(f) required the trial judge to independently weigh the evidence and assess the witnesses’ credibility. *Id.* (citing *Curran v. State*, 4 S.W.2d 957, 958 (Tenn. 1928)). “The trial judge must be personally satisfied with the verdict.” *Id.* Here, the trial court performed its role as the thirteenth juror and determined that the weight of the evidence was against the jury’s verdict in Count 2; the court then properly set aside the jury’s verdict as to that count. Thus, even if the issue were not waived, the trial court applied the proper analysis under Rule 29 and Rule 33(d), and Defendant would not be entitled to relief.

III. Conclusion

Based upon the foregoing, we affirm the judgments of the trial court.

s/Robert L. Holloway, Jr.
ROBERT L. HOLLOWAY, JR., JUDGE